srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4971 OF 2007

Shri Pandurang Dnyandeo Markad
Age 41 years, Occupation Busines
residing at Padasthal,Taluka Indapur,
District Pune. .. Petitioner

Versus.

1. The State of Maharashtra
(through the G.P.'s Office)
2. The Secretary,
Department of Dairy Development and
Fisheries.
3. The Commissioner of Fisheries,
M.S.
4. Shri Vilasrao Deshmukh
Chief Minister,
Maharashtra.
5. Shri Harshavardhan Shivajirao Patil,
Minister for Marketing, Government of
Maharashtra.
6. Shri Anees Ahmed
Minister for Fisheries,
Government of Maharashtra
7. Shri Arvind N.Jagtap.
S.Talaj, Taluka Indapur,
District Pune. .. Respondents

Mr. A. V. Anturkar i/b Mr. Sugandh Deshmukh for the petitioner.
Mr. Sanjeev P. Kadam for the respondent no.7.
Mr. A. A. Kumbhakoni, Associate Advocate General with Ms. S. S. Bhende, A.G.P. for the Respondent Nos. 1 to 6- State.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.
DATE: JULY 18, 2007.

ORAL JUDGMENT (Per D.G.Karnik, J)

1. Rule. Learned Associate Advocate General - Mr. A. A. Kumbhakoni waives service for respondent nos. 1 to 6 and Mr. Kadam waives service for the respondent no.7. By consent heard forthwith.

2. By this petition, the petitioner challenges the order dated 14th May 2007 passed by the State of Maharashtra, the first respondent herein. By that order the respondent no.1 confirmed its earlier decision not to grant any extension to the fishing contract granted to the petitioner for a period of one year from 1st July, 2007 and directed that the contract should be awarded afresh by inviting tender.

3. The petitioner was successful tenderer for the contract of fishing in Ujani Reservoir for the period 2002-2007. Accordingly, the petitioner was awarded a contract of fishing in Ujani reservoir for the period of five years from July 2002 to June 2007. In the year 2005-06, because of unprecedented rains in the State of Maharashtra, fishing operations in the entire State were disturbed to a very large extent. Therefore, the Government of Maharashtra took a decision that all fishing contracts throughout the State of Maharashtra be extended by one year. Accordingly, the petitioner was also entitled to extension for the period of fishing contract for one year from July, 2007 till the end of June, 2008. However, by an order passed by the Chief Minister stay was granted for extension of fishing contract only in respect of the petitioner. All the fishing contracts throughout the State of Mahatrashtra, however, were

extended by one year. Aggrieved by this discrimination and arbitrary action, the petitioner filed a Writ Petition bearing Writ Petition No.2001 of 2007 in this Court. By an order dated 26th March, 2007, a Division Bench (Coram: F.I.Rebello and R.M.Sawant, JJ) of this Court allowed the Writ Petition on the short ground that the order was passed without hearing the petitioner. This Court accepted the statement made by the learned Assistant Government Pleader that application made by the petitioner for vacating the stay to extension of fishing contract to the petitioner would be decided within a period of four weeks and the decision would be taken after giving notice to the petitioner.

4. It appears that in pursuance of the said statement made by the learned A.G.P. in Writ Petition No. 2001 of 2007 which was accepted by this Court, the Government took a fresh decision on 14th May, 2007. By the said decision, the Government decided not to accept the representation of the Petitioner, i.e., the Government took a decision not to extend period of fishing contract of the petitioner by one year. This decision, however, was taken without notice and without hearing the petitioner.

5. In our opinion, the order dated 14th May, 2007 cannot be sustained for the reasons more than

one. Firstly, in Writ Petition No. 2001 of 2007, an unequivocal statement was made by the learned A.G.P. before this Court that the representation of the petitioner will be decided afresh by the State Government after notice to the petitioner. Admittedly, no notice was given to the petitioner. Therefore, the undertaking given to this Court that the matter will be decided afresh by giving notice of hearing to the petitioner was not complied with. At this stage, learned Associate Advocate General states that because of the miscommunication from the Government Pleader's Office the State was not aware of this undertaking. Whatever may be the reason for the breach the fact remains that the undertaking given to this Court has not been followed.

6. Secondly, it is not disputed that the extension has been granted to all the fishing contracts throughout the State of Maharashtra and the Government Resolution to that effect has also been passed. However, the stay has been granted for extension of fishing contract only of the petitioner. No speaking order has been passed why the petitioner has been discriminated in the matter of extension of contract. The decision is contrary to the principles of equality laid down under Article 14 of the Constitution of India, and is arbitrary.

7. Thirdly, assuming that there are grounds on which the petitioner's case can be differentiated from the rest of the fishing contracts, it is undisputed that the decision affects the civil rights of the petitioner created by the Government Resolution granting extension to fishing contracts to everyone. Since civil rights of the petitioner are affected it was necessary for the respondents to grant an opportunity of hearing to the petitioner. This is apart from the undertaking given by the learned A.G.P. in Writ Petition No. 2001 of 2007 that the notice would be given to the petitioner.

8. Learned Associate Advocate General produced for our inspection the original file. We have gone through the file. We do not find any reasons whatsoever recorded anywhere to show that the petitioner's case is different than the case of other fishing contracts througout the State of Maharashtra.

9. In the circumstances, the impugned order cannot stand and it is hereby quashed and set aside. Stay granted to the extension of fishing contract of the petitioner for the period from July 2007 to the end of June 2008 is hereby vacated.

10. Rule is made absolute to the extent indicated above.

(D.G.KARNIK, J.) (S.B.MHASE, J.)